Chapter 1

1. BACKGROUND AND OBJECTIVES

1.1 INTRODUCTION

This first chapter of the Final Environmental Impact Statement (Final EIS) describes the background and objectives, including the purpose and need for the proposed rule changes by the Forest Practices Board. This chapter describes the legislative directive given to the Forest Practices Board and it includes a description of the regulatory framework. It summarizes the scoping activities that have been conducted and describes the significant issues that have been identified as related to the rule changes. Finally, it describes the decision to be made.

1.2 BACKGROUND

1.2.1 Forest Practices Rules

In 1974, the state legislature passed the Forest Practices Act. It was designed to, coincident with maintenance of a viable forest products industry, afford protection to forest soils, fisheries, wildlife, water quality and quantity, air quality, recreation, and scenic beauty (76.09.010 RCW) by regulating forest practices such as timber removals, road construction and maintenance, reforestation, and the use of forest chemicals. The Forest Practices Rules were first adopted in 1976. In 1986, forest stakeholders representing the tribes, the Departments of Fisheries, Game, and Ecology, the timber industry and landowners, and environmental interests met to determine if they could collaboratively negotiate an agreement upon which new, more protective, Forest Practices Rules could be based. The agreement was intended to resolve contentious forest practices issues and protect natural

resources. The stakeholder negotiation process became known as Timber, Fish and Wildlife (TFW) and resulted in the Timber, Fish and Wildlife Agreement (February 1987). In September 1987, the Forest Practices Board adopted new Forest Practices Rules resulting from successful TFW collaborative negotiations which strove to protect public resources and maintain a viable timber industry. Another major rule package was adopted in 1992, followed by rules for the northern spotted owl in 1996. The Forest Practices Board adopted rules for the marbled murrelet in 1997, after internal negotiations.

Beginning in late 1996, faced with an imminent listing of several salmon species in Washington under the Endangered Species Act (ESA), as well as new information from watershed analysis and other sources indicating that riparian protection was not adequate for public resources, the TFW participants began working on riparian issues and agreed to negotiate collaboratively in an effort to submit a proposal to the Forest Practices Board. The proposal would be the basis for new Forest Practices Rules that would address salmon and other aquatic and riparian species' needs on forest lands. Representatives from federal agencies and Washington counties joined the original TFW caucuses in the negotiations. After almost 2 years of negotiation, representatives of environmental interests and some Tribes withdrew from negotiations. The remaining five caucuses continued negotiating. The five-caucus group wrote the Forests and Fish Report (April 1999). The groups contributing to the development of the report included state agencies (the Departments of Natural Resources [DNR], Washington State Department of Fish and Wildlife [WDFW], and Washington State Department of Ecology [Ecology]), federal agencies (U.S. Fish and Wildlife Service [USFWS], National Marine Fisheries Service [NMFS], and the U.S. Environmental Protection Agency [EPA]), the Colville Confederated Tribes, the Northwest Indian Fisheries Commission, the Washington State Association of Counties, the Washington Forest Protection Association, and the Washington Farm Forestry Association.

The Forests and Fish Report provided the collaboratively agreed-upon measures for which caucus members believed new Forest Practices Rules should be written. The Forests and Fish Report was submitted to the Forest Practices Board as an alternative to be considered for new rule-making. The Forest Practices Board also received proposals from the Washington Environmental Council/National Audubon Society, the Puyallup Tribe, the Muckleshoot Tribe, and the Yakama Indian Nation.

1.2.2 Legislative Directive

The Washington legislature became involved in the effort to protect forested salmon habitat during the 1999 session. The legislators referenced the Forests and Fish Report in the Salmon Recovery Bill (Engrossed Substitute House Bill 2091). The legislators strongly encouraged the Forest Practices Board to follow the recommendations of the Forests and Fish Report. If the Forest Practices Board chooses to adopt rules inconsistent with the Forests and Fish Report, the Bill requires the Forest Practices Board to report the reasons for the inconsistencies to legislative committees and let the committee know if all parties to the Forests and Fish Report have agreed to the suggested changes. The Forest Practices Board must defer adoption of rules that are inconsistent with the Forests and Fish Report for "sixty days of the legislative session to allow for the opportunity for additional

public involvement and legislative oversight (ESHB 2091 Section 204 (1)).” ESHB 2091 was signed into law in June 1999.

1.3 PURPOSE AND NEED

1.3.1 Need

As noted in the background section above, in recent years, concern has grown over the adequacy of Forest Practices Rules for protecting riparian and aquatic resources. Particular concerns include the question that riparian buffer and leave tree requirements may not provide enough protection for riparian functions and that rules regarding forest roads may still allow too much sediment production. Four major discoveries/events support the need for revised Forest Practices Rules.

The first area of need is related to water typing.

> The water typing system used in Washington’s Forest Practices Rules is based on beneficial uses, one of which is fish. Type 1, 2, and 3 Waters contain anadromous and resident fish, while Type 4 and 5 Waters do not. The water typing system has been in place for more than 20 years. Maps developed to implement the system were based on aerial photo interpretation with limited field verification. Over the years, field verification has provided data on actual fish use of waters which has led to updated water type maps. While water types are continually reviewed and updated, large numbers of waters have not been field verified. In August 1994, Point-No-Point Treaty Council published a report, *Stream Typing Errors in Washington Water Type Maps for Watersheds of Hood Canal and the Southwest Olympic Peninsula.* Simultaneously, the Quinault Indian Nation and the Department of Fish and Wildlife were also reviewing water types in the southwest part of the Olympic Peninsula. Data from both studies indicated that seventy-two percent of Type 4 streams were actually Type 2 or 3 streams. Because water typing triggers riparian protection throughout the Forest Practices Rules, the definitions used to determine water types must reflect current knowledge about fish use and habitat.

The discovery of inadequate water typing highlighted the need for new Forest Practices Rules that would represent on-the-ground reality in terms of fish use. In response to this need, the Forest Practices Board developed emergency water typing rules, which have been in place since November 1996.

The second indication that Forest Practices Rules were inadequate was the prescriptive outcomes from watershed analysis. Watershed analysis is a process that reviews all forest lands within a watershed, finds sensitive resources within that watershed, and prescribes methods for protecting those sensitive resources. The watershed analysis rules were adopted in 1992 (chapter 222-22 WAC). Through the years, watershed analysis prescriptions for riparian areas have consistently been more stringent than the current

Forest Practices Rules. This led to the realization that the current rules were not doing an adequate job of protecting riparian functions.

A third indicator of need for change in the Forest Practices Rules was the listing of many salmonid species on the federal and state threatened and endangered species lists. The lists include multiple races of chinook salmon, chum salmon, sockeye salmon, and steelhead, as well as the Columbia River bull trout. Other salmonids are being considered for listing. When a species is either federally or state-listed as threatened or endangered, the rules require DNR to consult with WDFW and make recommendations to the Forest Practices Board as to what, if any, modifications to the rules are necessary. The Forest Practices Board developed emergency salmonid rules, which were first put in place in May 1998. The maps which governed where the emergency salmonid rules applied were updated each time a new listing occurred.

The fourth reason for changes was EPA's identification of over 660 Washington streams as water-quality-impaired under the Clean Water Act. Past forest practices in Washington are considered as one of a number of factors contributing to these listings.

It is within this larger context, including the historical background described in Section 1.2, that the need for action may be summarized as follows:

There is a general need to amend current Forest Practices Rules to provide for greater protection of and long-term improvements in aquatic and riparian resources and a higher degree of public safety relative to the harvest of timber on forest lands subject to Forest Practices Rules. Specific related needs are that timber harvest activities on these lands do not impede the recovery of aquatic species under ESA; that they do not contribute to future listings of other aquatic/riparian fish and wildlife; that they provide for habitat that can support harvestable fish populations, and that these activities allow for improvements in water quality of impaired streams.

1.3.2 Purpose

The primary purpose of the proposed action is to strive to achieve the four goals identified by the Forest Practices Board (minutes, September 22, 1998). The following goals were developed to satisfy the need identified above.

1. Provide compliance with ESA for aquatic and riparian-dependent species on non-federal forest lands.
2. Restore and maintain riparian habitat on non-federal forest lands to support a harvestable supply of fish.
3. Meet the requirements of the Clean Water Act for water quality on non-federal forest lands.
4. Keep the timber industry economically viable in the state of Washington.

Based on a full analysis of the proposal and reasonable alternatives, the Forest Practices Board will determine whether and how to modify the current rules through amending or

repealing current rules, or adopting new rules. Rules pertaining to water quality must be approved by Ecology.

1.4 REGULATORY FRAMEWORK

Sections 1.2 and 1.3 provide historical background and a description of the purpose and need for the rule proposal. This section describes the regulatory framework associated with the rule proposal. It is divided into three subsections. First, the state Forest Practices Act, the Forest Practices Board, and the Forest Practices Rules are described. The second subsection describes the current status of the Forest Practices Rules, including the recent adoption of emergency rules and the process for adoption of permanent rules. Finally, the third subsection discusses other federal and state laws that affect the Forest Practices Rules.

1.4.1 State Forest Practices Act

The Forest Practices Board was created by the Forest Practices Act (chapter 76.09 RCW) in 1974 and originally consisted of 11 appointed or designated members. A 12th member, representing the director of WDFW, was added to the board by ESHB 2091 (June 1999). The Forest Practices Act directs the Forest Practices Board to adopt rules where necessary to accomplish the purposes and policies established by the Washington legislature and to implement other provisions of the forest practices chapter. Specifically, the board establishes minimum standards for forest practices. The rules are adopted into Title 222 of the Washington Administrative Code. The goal of the Forest Practices Act and the resultant rules are to protect the state natural resources while maintaining a viable forest industry. The board adopts rules pursuant to the Administrative Procedure Act (chapter 34.05 RCW), the State Environment Policy Act (SEPA) (chapter 43.21 RCW) and the Regulatory Fairness Act (chapter 19.85 RCW).

The process for protecting public resources includes classifying forest practices according to the potential for each forest practice to impact public resources (and in the new emergency rules to threaten public safety from unstable slopes). There are four classifications of forest practices, each with its own set of requirements (RCW 76.09.050). A Class I forest practice is one with no direct potential for damaging a public resource. These practices may be started without any application or notification to DNR. A Class II forest practice is one with less than ordinary potential for damaging a public resource. These practices require a completed notification to DNR. A Class III forest practice is one that is not a Class I, II, or IV. A person wishing to start a Class III practice must submit an application to DNR. DNR has 30 days to either approve or disapprove the application.

Class IV forest practices have two categories: Class IV–General and Class IV–Special. Class IV-special practices are those with a potential for a substantial impact on the environment. Class IV-General practices are on lands platted after 1960, lands being converted to another use, or lands not slated to be reforested because of the likelihood of future conversion to a use other than forestry. If a certain forest practice is proposed within a habitat with a special designation due to a threatened or endangered species, that forest practice becomes a Class IV–Special. A person wishing to start a Class IV forest practice must submit an application to the department. The department decides whether a

detailed environmental statement must be prepared by the applicant under SEPA. The department has 30 calendar days from date of receipt of the complete application to either approve or disapprove it, unless the detailed statement is required. If the statement is required, the application must be approved or disapproved within 60 days unless the Commissioner of Public Lands (the elected official who directs DNR) issues an order determining that the process cannot be completed within the allotted time.

Class IV-Specials are processed under SEPA. Review under SEPA (chapter 43.21C RCW) allows a more-detailed assessment of whether a particular action will result in a significant adverse impact on the environment. This review consists of a checklist and is followed by a department determination of significance or nonsignificance. Significant, as used in SEPA, means a reasonable likelihood of more than a moderate impact on environmental quality (WAC 197-11-794). A determination of non-significance (DNS) means the proposal is not likely to have a significant adverse impact, and, therefore, an EIS is not required. A mitigated DNS includes specified mitigation measures or clarifications, changes, or conditions to the proposal that would allow issuance of a DNS. If the determination is one of significance, then an EIS must be prepared or the proposal modified before DNR can act upon the forest practices application. Under SEPA, a forest practice can be conditioned to mitigate specific adverse environmental impacts or denied, if reasonable mitigation is insufficient to reduce the impacts to non-significance (WAC 197-11-660).

1.4.2 Status of Forest Practices Rules

1.4.2.1 Emergency Rules

In response to threatened and endangered fish listings and water quality issues, the Forest Practices Rules have been undergoing revision since 1996. The first step in this revision process occurred in November 1996 when the Forest Practices Board adopted emergency water typing rules. In May 1998, the first salmonid emergency rules were adopted. These rules only applied to specific areas of the state that are occupied or potentially occupied by threatened or endangered fish. However, landowners with an approved habitat conservation plan (HCP) were exempt from these rules. For the specific areas that the salmonid emergency rules applied, harvest within 100 feet and road construction within 200 feet of a Type 1, 2, or 3 water were classified as Class IV-Special. For road activities, SEPA was triggered.

In January 2000, under the direction of ESHB 2091, the Forest Practices Board adopted many of the Forests and Fish Report recommendations as new emergency rules. These were adopted to replace the former salmonid and water type emergency rules. These new emergency rules became effective March 20, 2000. Per ESHB 2091, these rules will be effective until June 30, 2001 or until new permanent rules are adopted, whichever is sooner.

1.4.2.2 Permanent Rules

ESHB 2091 also strongly encourages the Forest Practices Board to adopt the recommendations of the Forests and Fish Report as the new permanent Forest Practices

Rules by June 30, 2001. Under the SEPA process, the Forest Practices Board identified the Forests and Fish Report recommendations as the preferred alternative. They also identified a no action alternative and a third alternative for evaluation in this EIS (these are referred to as Alternatives 2, 1, and 3, respectively, in this EIS). The adoption of new permanent rules will not be completed until this EIS is finalized and the Forest Practices Board selects an alternative (or a modification of one of the alternatives) to adopt as new permanent Forest Practices Rules (see Section 1.6).

As part of ESHB 2091, landowners with 80 acres or less of forest land statewide will not have to leave expanded riparian buffers (as described in the Forests and Fish Report) on parcels of 20 acres or less in size. Instead, these landowners must comply with the permanent forest practice rules in effect January 1, 1999, but may also be required to leave some additional trees adjacent to streams.

1.4.3 Other Laws

1.4.3.1 State Shoreline Management Act

The state Shoreline Management Act (SMA) (chapter 90.58 RCW) was adopted through a citizen referendum in 1972. The SMA applies throughout the state, to all marine waters, submerged tidelands, lakes over 20 acres, and all streams with a mean annual flow greater than 20 cubic feet per second. Marshes, bogs, and swamps associated with the lakes, streams, and marine waters are also included, as is a 200-foot-wide shoreline area landward from the water's edge. The primary intent of the SMA is to ensure "the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest." The Act directs that this goal shall be attained through the protection of natural shorelines, and through encouragement of water-related and water-dependent uses. The underlying goal is to find an equitable balance between uses that allow for reasonable development and economic activity, while affording preference to preserving the public's access and enjoyment of the state's shorelines.

Forest practices rules are related to the SMA because they address specific forest practices along Type 1 streams, which are defined as "shorelines of the state," and are regulated by the SMA. With regard to commercial timber harvest, the SMA has specific requirements (RCW 90.58.150): Ecology or another responsible local government agency is permitted to allow only selective commercial timber cutting and to require that no more than 30 percent of the merchantable trees may be harvested in any 10-year period within 200 feet of the ordinary high water mark of shorelines of statewide significance. Other timber harvesting methods may be permitted in those limited instances where the topography, soil conditions, or silvicultural practices necessary for regeneration render selective logging ecologically detrimental. Clearcutting of timber must be solely incidental to the preparation of land for other uses authorized by the SMA.

1.4.3.2 Federal Endangered Species Act

ESA (16 U.S.C. §1531 et. seq.) is the primary federal law directed at preventing extinction of species. The responsibility for implementation and enforcement of ESA lies with

federal agencies: USFWS is responsible for ESA-listed species of wildlife and resident fish (e.g., bull trout) and NMFS is responsible for ESA-listed species of anadromous fish (e.g., salmon and steelhead) and marine wildlife. A species under ESA includes any species or subspecies of fish, wildlife, or plant; any variety of plant; and any distinct population segment of any vertebrate species that interbreeds when mature.

Among other things, ESA directs USFWS and NMFS to conduct reviews of the population status of various species of concern and, as warranted, list species as endangered or threatened, designate federal critical habitat for listed species, implement laws to protect listed species and their associated habitats, and develop and implement recovery plans. Species are listed as endangered when it is determined that the species is in danger of extinction in the foreseeable future throughout all or a significant portion of its range. Species are listed as threatened when they are deemed likely to become endangered within the foreseeable future throughout all or a significant portion of their ranges. Critical habitat is defined as the specific geographic areas, whether occupied by the species or not at the time of listing, that contain the physical or biological features essential to the species conservation.

Recent Federal Listings of Salmon and Char

In 1999, nine species or races of salmon and bull trout were listed as threatened or endangered under ESA. These listings, along with previous listings for steelhead (1997 and 1998) and Columbia River bull trout (1998), bring the total number of fish species or races listed as threatened or endangered in Washington to 16, with a high probability that coastal cutthroat will be listed as threatened in the near future. NMFS groups most of the anadromous (migratory between saltwater and freshwater) fish species into evolutionarily significant units (ESUs). An ESU is a population or group of populations of salmon that 1) is substantially reproductively isolated from other populations and 2) contributes substantially to the ecological/genetic diversity of the biological species.

Bull trout and coastal cutthroat trout exhibit four life history strategies: anadromous, adfluvial (migratory between lakes and rivers), fluvial (migratory within river systems), and resident (non-migratory). USFWS groups both trout into distinct population segments (DPSs). A DPS is a portion of the overall population of a species which is both a discrete and significant part of that population. "Discrete" means that the group in question is separated from others due to physical, physiological, ecological, or behavioral factors, or if it is separated by a jurisdictional boundary that denotes significant differences in protective mechanisms for the species. "Significant" means at least one of the following: 1) the discrete group in question persists in an ecological setting unusual or unique for the species; 2) loss of the discrete group would create a significant gap in the range of the species; 3) the discrete group represents the only natural occurrence of a species that may be more abundant elsewhere as an introduced population outside its historic range; or 4) the genetics of the discrete group differ markedly from that of other populations of the species.

The "Take" Prohibition

ESA prohibits the take of a federally endangered species and authorizes the agencies to extend this prohibition to threatened species by rules (see 4(d) rule discussion below). "Take" in this context is defined in Section 3 of the ESA as "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect" (16 U.S.C. 1532(19)). The USFWS (50 C.F.R. 17.3) defines "harm" to mean "an act which actually kills or injures wildlife. Such an act may include significant modification or degradation of habitat where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, such as breeding, feeding, or sheltering." Unauthorized take can be both a civil and a criminal offense punishable by fines and/or imprisonment.

Habitat Conservation Plans

Section 10 of ESA provides non-federal landowners with an alternative to avoiding take of federally listed species through the development of HCPs. The purpose of HCPs is to allow productive use of nonfederal lands used by federally listed species, while minimizing and mitigating effects on the federally listed species to the maximum extent practicable. Section 10 of the ESA provides for the issuance of an Incidental Take Permit (ITP). As part of the application for an ITP, the landowner must provide a mitigation plan for the proposed take. This mitigation plan is called an HCP. To approve an ITP, NMFS and/or USFWS must determine the following:

- The taking is incidental to an otherwise lawful activity.
- The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking.
- The applicant will ensure that adequate funding for the HCP will be provided;
- The taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild.
- Any other measures deemed necessary by the Secretaries of Commerce or the Interior (depending on the agency involved) will be met.

One of the primary advantages of an HCP is that landowners can achieve some flexibility in managing for federally listed species on their lands, and they can achieve a reasonable level of certainty with respect to how they manage for federally listed species in the face of a changing, and often increasingly restrictive, regulatory environment. One of the primary disadvantages of an HCP is that preparation and approval tend to be relatively time-consuming and expensive. An HCP is often cost-prohibitive for smaller landowners.

The 4(d) Rule

The 4(d) rule refers to Section 4(d) of ESA (16 U.S.C. 1533(d)) which allows the Secretary of the Interior or Commerce to develop regulations as necessary to conserve any species listed as threatened. Rules under Section 4(d) have been developed in the past to prescribe the conditions under which take is allowed. By current USFWS rule, the take prohibition applies to all threatened species, except as provided by species-specific special rules. Development of regulations under this section could provide relief from the take prohibition.

With the final listing of bull trout populations, USFWS defined a 4(d) rule, and it is currently being implemented. The Forests and Fish Report anticipates that this 4(d) rule will be amended to cease prohibiting any incidental take that may result from forest practices that are subject to state Forest Practices Rules consistent with the Forests and Fish Report.

NMFS issued a draft 4(d) rule (January 2000) for public and agency review covering the recently listed threatened salmon species in Washington. A final rule was issued in July 2000. Among other things, this rule stated that Washington forest practices would not trigger the take prohibitions of ESA as long as NMFS finds that the Forest Practices Rules in effect are at least as protective as the negotiated Forests and Fish Report.

1.4.3.3 State Listing of Endangered, Threatened and Sensitive Species

WDFW maintains a list of endangered, threatened, and sensitive species (WAC 232-12-014 and 232-12-011). In 1990, the Washington Fish and Wildlife Commission adopted listing procedures that identify how species are listed, criteria for listing and de-listing, and requirements for recovery and management plans (WAC 232-12-297). These state lists are separate from the federal ESA lists because they deal with species status relative to Washington State only. A Class IV-Special application is required for specific forest practices that are conducted within critical widlife habitats associated with state-listed (as well as federally listed) species. These critical habitats are identified in WAC 222-16-080.

1.4.3.4 Federal Clean Water Act

The Clean Water Act is the principal federal legislation directed at protecting water quality. The purpose of the Clean Water Act includes "the protection and propagation of fish, shellfish, and wildlife." Two agencies, EPA and the U.S. Army Corps of Engineers (USACE) are responsible for implementation of the Clean Water Act, with the primary responsibility assigned to EPA.

EPA is responsible for implementation of Section 303 of the CWA, which includes provisions for water quality standards and total maximum daily loads (TMDLs). Each state has the authority to establish water quality standards, pursuant to review and approval by EPA. In Washington, water quality standards are developed by Ecology.

In accordance with Section 303(d) of the Clean Water Act, Ecology must periodically identify its polluted waterbodies and submit this list to EPA. These are "water quality limited" estuaries, lakes, and streams that fall short of state surface water quality standards and are not expected to improve in the next 2 years. These standards are the criteria to ensure surface waters can be beneficially used for purposes such as fishing, swimming, boating, drinking, fish habitat, and for industrial and agricultural purposes. EPA requires the states to set priorities for cleaning up threatened waters and establishing a TMDL for each.

Water Quality

Forest practices can impact water quality and its beneficial uses such as water supply and fisheries. The Forest Practices Rules must meet state water quality standards and

objectives. State water quality standards include both numeric standards (see Section 3.6.2) and an antidegradation policy to protect high quality waters that exceed the numeric standards. The Forest Practices Rules address these standards with the implementation of Best Management Practices (BMPs) for timber harvest practices and road construction and maintenance practices. BMPs are intended to reduce or minimize forest-practices-related effects on water quality and its beneficial uses. Non-point source pollutants produced from forest practices may include stream water temperature and sediment and its related parameters, such as turbidity and suspended sediment.

Wetlands

Under federal law, wetlands are considered a subclass of Special Aquatic Sites (40 CFR Section 230.3) and have been deemed Waters of the United States (33 CFR 328.3). All Waters of the United States are subject to regulation under the Clean Water Act by USACE and EPA. Additionally, Executive Order 11990 requires federal agencies "to avoid....adverse impacts associated with the destruction or modification of wetlands...wherever there is a practicable alternative." To fulfill this requirement, under Section 404 of the CWA, USACE has developed a methodology to identify and delineate wetland sites.

Exemptions to wetland regulations (Sections 404 and 401 of the Clean Water Act) are granted under Section 404(f)(1) and allow for normal silvicultural activities, as well as other activities. Notably, the construction or maintenance of forest roads for silvicultural purposes is exempt from regulation when such roads are constructed and maintained in accordance with BMPs.

1.4.3.5 Hydraulic Project Approval

Under the Hydraulic Code (RCW 75.20.100-160), a hydraulic project approval (HPA) from WDFW is required for any construction activity in or near state waters. An HPA is also required for the performance of other work that will use, divert, obstruct, or change the natural flow or bed of any waters of the state. This permit allows WDFW to condition these activities to prevent damage to fish, shellfish, and their habitats. Forest landowners are subject to this law whenever they build a road that crosses a stream, as well as during other activities.

1.4.3.6 Compliance with Federal and State Requirements

Forest landowners and operators are subject to both federal and state laws. At present, a forest practices permittee can be in compliance with state Forest Practices Rules, but in violation of ESA take prohibitions. WAC 222-50-020 states that compliance with the Forest Practices Act or Forest Practices Rules "does not ensure compliance with the Endangered Species Act or other federal laws."

1.5 SCOPING AND THE SIGNIFICANT ISSUES

The first step in preparing an EIS is to conduct scoping. The purpose of scoping is to narrow the focus of the EIS to significant environmental issues, to eliminate insignificant impacts from detailed study, and to identify the alternatives to be analyzed in the EIS.

Scoping can also help determine the level of analysis and the types of data required for analysis.

1.5.1 Scoping

In April 1999, the Forest Practices Board initiated scoping by issuing a scoping notice titled "Determination of Significance and Request for Comments on Scope of EIS." This document advised the public that the Forest Practices Board intended to prepare an EIS on modifications to the Forest Practices Rules. It also requested suggestions and information on the scope of environmental issues to be addressed in the EIS. Comments were due May 6, 1999. An internal scoping report was prepared to synthesize and summarize comments.

Sixteen scoping responses were received, including four from individuals, three from tribes, three from forest commodity interests, two from local governments, two from non-profit organizations, and two from businesses. These ranged from a single comment to multi-page comments.

In addition to public scoping, internal scoping was conducted. Internal scoping involved review of the scoping report and individual scoping comments by the Forest Practices Board and members of the team of specialists preparing this EIS and their individual consideration of the issues.

1.5.2 Significant Issues

As a result of both public and internal scoping, the following significant issues were identified for analysis in this EIS:

- Sediment—Concern was expressed over how well the Forest Practices Rules will protect lands from mass wasting and surface erosion related to roads and timber harvest and the resultant effects of sedimentation on water quality and fish habitat.
- Hydrology—Concern was expressed over how the Forest Practices Rules will affect the hydrology of forested watersheds, particularly regarding peak flows, and the resultant effect on fish habitat and flood damage.
- Riparian Habitat—Concern was expressed over how well the Forest Practices Rules will affect riparian vegetation for large woody debris production and delivery, maintenance of shade for water temperature protection, maintenance of stream bank stability, detrital production, and microclimate protection.
- Wetlands—Concern was expressed over how well the Forest Practices Rules will protect against the loss of wetlands and their functions.
- Water Quality—Concern was expressed over how well the Forest Practices Rules will protect surface and ground water quality from pesticide applications. This is a special concern relative to ground water aquifers where aquifer resources are limited (i.e., salt water islands). There is broad concern over the adequacy of Forest Practices Rules for the maintenance and improvement of water quality, especially in terms of sediment and temperature. In general, will state water quality standards be met? Will improvements

in temperature and sediment conditions over time allow for the removal of streams from the 303(d) list?

- Fish—Concern was expressed over how the Forest Practices Rules will affect fish passage, water quality for fish, fish habitat elements, channel conditions and dynamics, and watershed conditions relative to roads.
- Wildlife—Concern was expressed over how well the Forest Practices Rules will affect the quality and quantity of riparian habitats, wetland habitats, and other aquatic habitats for wildlife (especially unique habitats, known to be priority habitats for certain aquatic species).
- Fire—Concern was expressed over how the Forest Practices Rules will affect the frequency and intensity of wildfire and disease, especially in eastern Washington.
- Cultural Resources—Concern was expressed over how well the Forest Practices Rules will result in the identification and protection of historic and cultural sites from the effects of forest management.

1.5.3 Other Issues and Related Documents

SEPA requires an EIS to analyze *significant* impacts (WAC 197-11-440). Impacts not considered significant do not have to be addressed. Further, SEPA emphasizes that an EIS should analyze *environmental* impacts (WAC 197-11-448). The intent is that the responsible agency will weigh the EIS as one of potentially several pieces of information needed in the decision-making process. The EIS is not required to evaluate and document all possible effects and considerations, such as economic competition, personal income and wages, and social impacts. Therefore, the focus of this document is on a comparison of a reasonable range of alternatives and an analysis of the environmental impacts for significant issues.

Economic impacts related to the proposed rule changes will be addressed separately by the Small Business Economic Impact Statement required by the Regulatory Fairness Act (chapter 19.85 RCW) and the Cost Benefit Analysis required by the Administrative Procedure Act (chapter 34.05 RCW). The Small Business Economic Impact Statement analyzes the disparity of the impact of rules on large businesses versus small businesses. Both of these documents will be posted on the Forest Practices Board website (www.wa.gov/dnr) when they are completed. They will also be available from DNR, Forest Practices Division (360/902-1400).

1.6 DECISION TO BE MADE

The Final EIS will provide information that the Forest Practices Board will use in finalizing new, permanent Forest Practices Rules. The permanent rules are being drafted to accomplish the goals of the Forest Practices Board as stated earlier in this chapter (section 1.3). The Forest Practices Board anticipates conducting the 20-day review (RCW 76.09.040(2)) on these draft rules from April 4 to April 26, 2001. The draft rules will be proposed officially by filing them with the Code Reviser and distributing them to the public. Public hearings will be held in Yakima and Seattle on April 24 and 25, 2001.

The Forest Practices Board will finalize the rules using the following information:

- Public comments on the Draft EIS
- Final EIS
- The small business economic impact statement
- The cost-benefit analysis
- Public comments on the proposed rules

The schedule mandated by the legislature (ESHB 2091) for permanent rule adoption is June 30, 2001.

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